

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ALPINE SECURITIES CORPORATION,

Defendant.

Civil No. 1:17-CV-04179-DLC

Honorable Judge Denise L. Cote
Magistrate Judge Ronald L. Ellis

ECF CASE

**DEFENDANT’S NOTICE OF (1) MOTION FOR RECONSIDERATION OF THE
COURT’S MARCH 30, 2018 OPINION AND ORDER DENYING DEFENDANT’S
CROSS-MOTION FOR SUMMARY JUDGMENT; AND (2) ALTERNATIVE MOTION,
TO CERTIFY THE COURT’S ORDER DENYING DEFENDANT’S CROSS-MOTION
FOR SUMMARY JUDGMENT FOR INTERLOCUTORY APPEAL**

PLEASE TAKE NOTICE that, pursuant to Local Rule 6.3, Defendant Alpine Securities Corporation (“Alpine”), by and through undersigned counsel, moves this Court for reconsideration of the Court’s denial of Alpine’s Cross-Motion for Summary Judgment in its March 30, 2018 Opinion and Order (“Opinion”) based on the following grounds:

1. The Court erred in ignoring the fact and the impact of the express congressional delegation of authority for enforcement of the Bank Secrecy Act (“BSA”).
2. The Court erred in applying *Chevron* to allow the United States Securities and Exchange Commission (“SEC”) to circumvent Congress’ express intent to delegate BSA authority to Treasury.
3. The Court ignored the requirements of the Administrative Procedure Act (“APA”).

In the alternative, Alpine requests Certification for Appeal pursuant to 28 U.S.C. § 1292(b) of the Court's denial of Alpine's Cross-Motion for Summary Judgment. Alpine seeks certification of the following controlling questions of law:

1. Whether the Court erred in ruling that the SEC has authority under Section 17(a) of the Exchange Act to enact Rule 17a-8 to give itself jurisdiction to pursue an enforcement action based on alleged violations of the SAR requirements of the Bank Secrecy Act ("BSA"), where it is indisputable that such authority has been delegated exclusively to the Treasury Department by Congress, and where the Treasury Department has not re-delegated such authority to the SEC.

2. Whether the Court erred in applying the *Chevron* doctrine to give deference to the SEC's position that it is entitled to pursue an enforcement action for violation of the SAR regulations of the BSA under Section 17(a) and Rule 17a-8, in derogation of Congress' express intent in the later, more specific provisions of the BSA to delegate BSA enforcement authority to the Treasury Department.

3. Whether the Rule 17a-8, even if properly promulgated in the first place in 1981, could lawfully incorporate FinCEN's later-promulgated SAR regulations of the BSA where the SEC did not follow the notice, comment and publication requirements of the APA or the Federal Register Act to amend Rule 17a-8 to include FinCEN's SAR regulations.

Alpine's Cross-Motion for Summary Judgment presented pure questions of law regarding the SEC's lack of authority to maintain its claim in this action. There is a substantial ground for difference of opinion on this controlling question of law and Alpine presented indisputable and controlling law on the matter not addressed by the SEC or discussed by the Court in its Order.

Finally, an immediate appeal will materially advance the ultimate termination of this action because Alpine sought dismissal of this case in its entirety.

Based on the foregoing, and for the reasons stated in the accompanying memorandum of law, Alpine respectfully requests that the Court reconsiders its denial of Alpine's Cross-Motion for Summary Judgment in its Order and, in the alternative, certify for appeal the Court's denial of Alpine's Cross-Motion for Summary Judgment pursuant to 28 U.S.C. § 1292(b).

DATED this 20th day of April, 2018.

/s/ Maranda E. Fritz

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